

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP
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Attorney for COUNTRYWIDE HOME LOANS, INC. AS SERVICING AGENT FOR BANK OF AMERICA,
N.A. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	CASE NO. 08-40814-RFN-7
	§	
MARK A. DOWNS and WANDA J.	§	
DOWNS,	§	
Debtor	§	CHAPTER 7
	§	
COUNTRYWIDE HOME LOANS, INC.	§	
AS SERVICING AGENT FOR BANK	§	
OF AMERICA, N.A. ITS	§	
ASSIGNS AND/OR SUCCESSORS IN	§	
INTEREST,	§	
Movant	§	HEARING DATE: 10/15/2008
	§	
v.	§	TIME: 09:30 AM
	§	
MARK A. DOWNS and WANDA J.	§	
DOWNS; SHAWN K. BROWN,	§	
Trustee	§	
Respondents	§	JUDGE RUSSELL NELMS

**MOTION OF COUNTRYWIDE HOME LOANS, INC. AS SERVICING AGENT FOR
BANK OF AMERICA, N.A. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST
FOR RELIEF FROM STAY OF ACTION AGAINST DEBTOR(S) PURSUANT TO 11
U.S.C. § 362(a) AND WAIVER OF THIRTY DAY REQUIREMENT PURSUANT TO
§ 362(e)**

NOTICE - RESPONSE REQUIRED

**PURSUANT TO LOCAL BANKRUPTCY RULE 4001 (b), A RESPONSE IS
REQUIRED. THE TRUSTEE, IF ONE HAS BEEN APPOINTED, OR THE
DEBTOR SHALL FILE A RESPONSE TO ANY MOTION FOR RELIEF
FROM THE AUTOMATIC STAY WITHIN TWELVE (12) DAYS FROM
THE SERVICE OF THE MOTION. THE DEBTOR'S RESPONSE SHALL
INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO
HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE
STAY IS TO BE CONTINUED. IF THE DEBTOR DOES NOT FILE A**

RESPONSE AS REQUIRED, THE ALLEGATIONS IN THE CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THESE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

File a written response with the court at:

**CLERK, U.S. BANKRUPTCY COURT
501 WEST 10TH STREET,
FORT WORTH, TX 76102-3643**

UNDER BANKRUPTCY RULE 9006 (e) SERVICE BY MAIL IS COMPLETE UPON MAILING; UNDER BANKRUPTCY RULE 9006 (f), THREE (3) DAYS ARE ADDED TO THE PERIOD FOR FILING A RESPONSE WHEN NOTICE OF THE PERIOD IS SERVED BY MAIL.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, COUNTRYWIDE HOME LOANS, INC. AS SERVICING AGENT FOR BANK OF AMERICA, N.A. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST, by and through the undersigned attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.
2. On or about February 25, 2008, Debtors (hereinafter "Debtor") filed a petition for an order of relief under the Bankruptcy Code. The case was subsequently converted to a case under Chapter 7 of the Bankruptcy Code on July 02, 2008.
3. At the time of filing the Chapter 7 petition, Movant held a Note executed on June 27, 2003, by MARK A. DOWNS and WANDA J. DOWNS in the original amount of ONE HUNDRED NINETY-NINE THOUSAND NINE HUNDRED NINETY-SIX DOLLARS AND ZERO CENTS (\$199,996.00) with interest thereon at the rate of 4.630% per annum. A

true and correct copy of the Note is attached hereto as Exhibit "A".

4. The indebtedness is secured by a Deed of Trust dated June 27, 2003 and executed by MARK A. DOWNS and WANDA J. DOWNS on real estate with all improvements known as:

LOT 5, BLOCK 10R, OF MANSFIELD NATIONAL SECTION B, PHASE I, AN ADDITION TO THE CITY OF MANSFIELD, TARRANT COUNTY, TEXAS, ACCORDING TO THE AMENDING PLAT THEREOF RECORDED IN CABINET A, SLIDE 6885, PLAT RECORDS, TARRANT COUNTY, TEXAS.

A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B".

5. Debtor have failed to maintain current the payments due under the Note and are presently in arrears for 21 payments through and including the September 1, 2008 payment.

6. The outstanding indebtedness to Movant is \$188,594.32 principal plus accrued interest, late charges, attorneys fees and costs as provided in the Note and Deed of Trust.

7. Further cause may exist to terminate the automatic stay if the Debtors fail to provide proof of adequate insurance and payment of applicable taxes by Debtors as required by the Note and Deed of Trust. Movant hereby demands proof of insurance and payment of applicable taxes by Debtors. Movant reserves the right to further assert that Debtors have failed to pay taxes or insurance based on the response of Debtors.

8. In accordance with the terms of the Note and Deed of Trust, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

9. Debtor have failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Note and Deed of Trust.

11. The Movant further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. The Movant may contact the Debtor via telephone or written correspondence to offer such an agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.

12. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be afforded adequate protection including, but not limited to, having all post-petition payments brought current and being reimbursed for it's reasonable post-petition attorneys fees and expenses and that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

BY: /s/ PAUL KIM 9/29/2008

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ATTORNEY FOR MOVANT

CERTIFICATE OF CONFERENCE

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, represents the creditor on the foregoing Motion. The undersigned, an attorney, employed by BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, states that prior to filing the foregoing motion he/she did the following:

Made a good faith effort to negotiate a settlement of the dispute with Debtor's Counsel.

NOTES: Paul Kim spoke to Brenda at the debtor's attorney's office. She advised that the motion was opposed.

Date of Conference Call: August 27, 2008 4:44 p.m.

BY: /s/ PAUL KIM 9/29/2008

PAUL KIM

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E-mail: NDECF@BBWCDF.COM

ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2008, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

/s/ PAUL KIM 9/29/2008

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ATTORNEY FOR MOVANT

DEBTORS:

WANDA J. DOWNS
409 VICTORY LANE
MANSFIELD, TX 76063

MARK A. DOWNS
409 VICTORY LANE
MANSFIELD, TX 76063

TRUSTEE:

SHAWN K. BROWN
P.O. BOX 93749
SOUTHLAKE, TX 76092

US TRUSTEE:

1100 COMMERCE STREET, ROOM 976
EARLE CABELL FEDERAL BLDG
DALLAS, TX 75242

DEBTOR'S ATTORNEY:

CRAIG DOUGLAS DAVIS
726 DALWORTH, STE 1001
GRAND PRAIRIE, TX 75050

PARTIES IN INTEREST:

INTERNAL REVENUE SERVICE
P.O. BOX 21126
PHILADELPHIA, PA 19114

PARTIES REQUESTING NOTICE:

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP
2323 BRYAN STREET
SUITE 1600
DALLAS, TX 75201

MANSFIELD ISD
C/O ELIZABETH BANDA
P.O. BOX 13430
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